

AMENDED IN SENATE APRIL 20, 2009

**SENATE BILL**

**No. 413**

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**Introduced by Senator Ducheny**

February 26, 2009

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~~An act to amend Sections 13201, 13205, and 13388 of, and to add Section 13232 to, the Water Code, relating to water quality. An act to amend Section 13260 of the Water Code, relating to water quality.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 413, as amended, Ducheny. ~~California regional water quality control boards: membership and program withdrawal. Waste discharge requirements: fees.~~

*The Porter-Cologne Water Quality Control Act, with certain exceptions, requires a waste discharger to pay an annual fee established by the State Water Resources Control Board. The act requires the total amount of fees collected to equal that amount necessary to recover certain costs relating to the administration of waste discharge requirements. Revenues generated by the imposition of the fee are deposited in the Waste Discharge Permit Fund for expenditure, upon appropriation by the Legislature, for specified water quality purposes.*

*This bill, for the purpose of calculating the annual fee, would specify that recoverable costs also include costs incurred by the State Water Resources Control Board and the California regional water quality control boards in the preparation of water quality control plans, as specified.*

~~(1) Under existing law, the State Water Resources Control Board and the California regional water quality control boards prescribe waste discharge requirements in accordance with the federal national pollutant discharge elimination system (NPDES) permit program established by~~

~~the federal Clean Water Act, and the Porter-Cologne Water Quality Control Act (Porter-Cologne). Existing law designates the state board as the state water pollution control agency for all purposes stated in the Clean Water Act and any other federal act. Federal regulations provide for program revision and withdrawal and the voluntary transfer of program responsibilities when a state program no longer complies with the requirements of the Clean Water Act and the state fails to take corrective action.~~

~~This bill would make legislative findings and declarations related to the regional boards and their responsibilities under the Clean Water Act and Porter-Cologne.~~

~~The bill would authorize the state board to order the commencement of withdrawal proceedings with regard to a regional board's program authority on the state board's own initiative or in response to a petition from an interested person. If the state board concludes that a regional board has substantially and continually failed to administer water quality programs in conformity with the appropriate acts and regulations, the state board would be required to list the deficiencies in the program, and provide the regional board a reasonable time to take corrective action. If the regional board fails to take the appropriate corrective action within the prescribed timeframe, the state board would be required to either withdraw the regional board's program authority or set a schedule for review of program authority after a probationary period. The bill would require any withdrawal order to state whether the state board or another regional board would become the implementing agency within the jurisdiction of the former regional board.~~

~~(2) The Porter-Cologne establishes 9 regions for the purposes of the act, each governed by a California regional water quality control board comprised of 9 members appointed by the Governor, with prescribed experience or associations. The act requires that each regional board member represent and act on behalf of all the people and reside or have a principal place of business within the region. Under the act, if an appointment cannot be made for the county government member because of a restriction under existing law on income directly or indirectly from any person subject to waste discharge requirements or applicants for waste discharge requirements, the act authorizes the appointment of persons not specifically associated with any category.~~

~~This bill would revise those provisions to establish regional boards of 7 members, to be appointed by the Governor. Each member would be required to be appointed on the basis of his or her demonstrated~~

interest and proven ability in the field of water quality, including water pollution prevention, water pollution control, and understanding of water pollution and related water resource management problems in his or her region, and his or her ability to attend substantially all meetings of the regional board, and to actively discharge all duties and responsibilities of a member of the regional board.

(3) Existing law provides that each member of a regional board receive \$100 for each day that member is engaged in the performance of official duties, except as specified, and that the total compensation received by members of each regional board not exceed, in any one fiscal year, the sum of \$13,500.

This bill would provide that each regional board member may receive \$500 for each day that member is engaged in the performance of official duties. The bill would provide that the total compensation received by a regional board member in any fiscal year may not exceed \$30,000.

(4) Existing law prohibits a person from being a member of the state board or a regional board if that person receives, or has received, during the previous 2 years a significant portion of his or her income directly or indirectly from any person subject to waste discharge requirements or applicants for waste discharge requirements.

This bill would revise this provision with regard to regional boards by specifying that no person shall be a regional board member if that person receives, or has received, during the previous 2 years a significant portion of his or her income directly or indirectly from any person subject to waste discharge requirements, or applicants for waste discharge requirements, associated with discharges in that region.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 13260 of the Water Code is amended to
- 2     read:
- 3     13260. (a) ~~All~~ Each of the following persons shall file with
- 4     the appropriate regional board a report of the discharge, containing
- 5     the information which may be required by the regional board:
- 6     (1) Any person discharging waste, or proposing to discharge
- 7     waste, within any region that could affect the quality of the waters
- 8     of the state, other than into a community sewer system.

1 (2) Any person who is a citizen, domiciliary, or political agency  
2 or entity of this state discharging waste, or proposing to discharge  
3 waste, outside the boundaries of the state in a manner that could  
4 affect the quality of the waters of the state within any region.

5 (3) Any person operating, or proposing to construct, an injection  
6 well.

7 (b) No report of waste discharge need be filed pursuant to  
8 subdivision (a) if the requirement is waived pursuant to Section  
9 13269.

10 (c) ~~Every~~ *Each* person subject to subdivision (a) shall file with  
11 the appropriate regional board a report of waste discharge relative  
12 to any material change or proposed change in the character,  
13 location, or volume of the discharge.

14 (d) (1) (A) Each person who is subject to subdivision (a) or  
15 (c) shall submit an annual fee according to a fee schedule  
16 established by the state board.

17 (B) The total amount of annual fees collected pursuant to this  
18 section shall equal that amount necessary to recover costs incurred  
19 in connection with the issuance, administration, reviewing,  
20 monitoring, and enforcement of waste discharge requirements and  
21 waivers of waste discharge requirements, *and the costs described*  
22 *in clause (ii) of subparagraph (C).*

23 (C) (i) Recoverable costs may include, but are not limited to,  
24 costs incurred in reviewing waste discharge reports, prescribing  
25 terms of waste discharge requirements and monitoring  
26 requirements, enforcing and evaluating compliance with waste  
27 discharge requirements and waiver requirements, conducting  
28 surface water and groundwater monitoring and modeling, analyzing  
29 laboratory samples, and reviewing documents prepared for the  
30 purpose of regulating the discharge of waste, and administrative  
31 costs incurred in connection with carrying out these actions.

32 (ii) *Recoverable costs may also include costs incurred in the*  
33 *preparation of water quality control plans pursuant to Section*  
34 *13170 or 13240. Any portion of the fee calculated to recover the*  
35 *costs described in this clause shall be calculated in a manner that*  
36 *ensures the fee payers are not paying disproportionately more than*  
37 *their impacts or benefits justify.*

38 (D) In establishing the amount of a fee that may be imposed on  
39 any confined animal feeding and holding operation pursuant to

1 this section, including, but not limited to, any dairy farm, the state  
2 board shall consider all of the following factors:

- 3 (i) The size of the operation.
- 4 (ii) Whether the operation has been issued a permit to operate  
5 pursuant to Section 1342 of Title 33 of the United States Code.
- 6 (iii) Any applicable waste discharge requirement or conditional  
7 waiver of a waste discharge requirement.
- 8 (iv) The type and amount of discharge from the operation.
- 9 (v) The pricing mechanism of the commodity produced.
- 10 (vi) Any compliance costs borne by the operation pursuant to  
11 state and federal water quality regulations.
- 12 (vii) Whether the operation participates in a quality assurance  
13 program certified by a regional water quality control board, the  
14 state board, or a federal water quality control agency.

15 (2) (A) Subject to subparagraph (B), any fees collected pursuant  
16 to this section shall be deposited in the Waste Discharge Permit  
17 Fund, which is hereby created. The money in the fund is available  
18 for expenditure by the state board, upon appropriation by the  
19 Legislature, solely for the purposes of carrying out this division.

20 (B) (i) Notwithstanding subparagraph (A), the fees collected  
21 pursuant to this section from stormwater dischargers that are  
22 subject to a general industrial or construction stormwater permit  
23 under the national pollutant discharge elimination system (NPDES)  
24 shall be separately accounted for in the Waste Discharge Permit  
25 Fund.

26 (ii) Not less than 50 percent of the money in the Waste  
27 Discharge Permit Fund that is separately accounted for pursuant  
28 to clause (i) is available, upon appropriation by the Legislature,  
29 for expenditure by the regional board with jurisdiction over the  
30 permitted industry or construction site that generated the fee to  
31 carry out stormwater programs in the region.

32 (iii) Each regional board that receives money pursuant to clause  
33 (ii) shall spend not less than 50 percent of that money solely on  
34 stormwater inspection and regulatory compliance issues associated  
35 with industrial and construction stormwater programs.

36 (3) Any person who would be required to pay the annual fee  
37 prescribed by paragraph (1) for waste discharge requirements  
38 applicable to discharges of solid waste, as defined in Section 40191  
39 of the Public Resources Code, at a waste management unit that is  
40 also regulated under Division 30 (commencing with Section 40000)

1 of the Public Resources Code, shall be entitled to a waiver of the  
2 annual fee for the discharge of solid waste at the waste management  
3 unit imposed by paragraph (1) upon verification by the state board  
4 of payment of the fee imposed by Section 48000 of the Public  
5 Resources Code, and provided that the fee established pursuant to  
6 Section 48000 of the Public Resources Code generates revenues  
7 sufficient to fund the programs specified in Section 48004 of the  
8 Public Resources Code and the amount appropriated by the  
9 Legislature for those purposes is not reduced.

10 (e) Each person discharges waste in a manner regulated by this  
11 section shall pay an annual fee to the state board. The state board  
12 shall establish, by regulation, a timetable for the payment of the  
13 annual fee. If the state board or a regional board determines that  
14 the discharge will not affect, or have the potential to affect, the  
15 quality of the waters of the state, all or part of the annual fee shall  
16 be refunded.

17 (f) (1) The state board shall adopt, by emergency regulations,  
18 a schedule of fees authorized under subdivision (d). The total  
19 revenue collected each year through annual fees shall be set at an  
20 amount equal to the revenue levels set forth in the Budget Act for  
21 this activity. The state board shall automatically adjust the annual  
22 fees each fiscal year to conform with the revenue levels set forth  
23 in the Budget Act for this activity. If the state board determines  
24 that the revenue collected during the preceding year was greater  
25 than, or less than, the revenue levels set forth in the Budget Act,  
26 the state board may further adjust the annual fees to compensate  
27 for the over and under collection of revenue.

28 (2) The emergency regulations adopted pursuant to this  
29 subdivision, any amendment thereto, or subsequent adjustments  
30 to the annual fees, shall be adopted by the state board in accordance  
31 with Chapter 3.5 (commencing with Section 11340) of Part 1 of  
32 Division 3 of Title 2 of the Government Code. The adoption of  
33 these regulations is an emergency and shall be considered by the  
34 Office of Administrative Law as necessary for the immediate  
35 preservation of the public peace, health, safety, and general welfare.  
36 Notwithstanding Chapter 3.5 (commencing with Section 11340)  
37 of Part 1 of Division 3 of Title 2 of the Government Code, any  
38 emergency regulations adopted by the state board, or adjustments  
39 to the annual fees made by the state board pursuant to this section,

1 shall not be subject to review by the Office of Administrative Law  
2 and shall remain in effect until revised by the state board.

3 (g) The state board shall adopt regulations setting forth  
4 reasonable time limits within which the regional board shall  
5 determine the adequacy of a report of waste discharge submitted  
6 under this section.

7 (h) Each report submitted under this section shall be sworn to,  
8 or submitted under penalty of perjury.

9 (i) The regulations adopted by the state board pursuant to  
10 subdivision (f) shall include a provision that annual fees shall not  
11 be imposed on those who pay fees under the national pollutant  
12 discharge elimination system until the time when those fees are  
13 again due, at which time the fees shall become due on an annual  
14 basis.

15 (j) Any person operating or proposing to construct an oil, gas,  
16 or geothermal injection well subject to paragraph (3) of subdivision  
17 (a), shall not be required to pay a fee pursuant to subdivision (d),  
18 if the injection well is regulated by the Division of Oil and Gas of  
19 the Department of Conservation, in lieu of the appropriate  
20 California regional water quality control board, pursuant to the  
21 memorandum of understanding, entered into between the state  
22 board and the Department of Conservation on May 19, 1988. This  
23 subdivision shall remain operative until the memorandum of  
24 understanding is revoked by the state board or the Department of  
25 Conservation.

26 (k) In addition to the report required by subdivision (a), before  
27 any person discharges mining waste, the person shall first submit  
28 both of the following to the regional board:

29 (1) A report on the physical and chemical characteristics of the  
30 waste that could affect its potential to cause pollution or  
31 contamination. The report shall include the results of all tests  
32 required by regulations adopted by the board, any test adopted by  
33 the Department of Toxic Substances Control pursuant to Section  
34 25141 of the Health and Safety Code for extractable, persistent,  
35 and bioaccumulative toxic substances in a waste or other material,  
36 and any other tests that the state board or regional board may  
37 require, including, but not limited to, tests needed to determine  
38 the acid-generating potential of the mining waste or the extent to  
39 which hazardous substances may persist in the waste after disposal.

1 (2) A report that evaluates the potential of the discharge of the  
2 mining waste to produce, over the long term, acid mine drainage,  
3 the discharge or leaching of heavy metals, or the release of other  
4 hazardous substances.

5 (l) Except upon the written request of the regional board, a report  
6 of waste discharge need not be filed pursuant to subdivision (a) or  
7 (c) by a user of recycled water that is being supplied by a supplier  
8 or distributor of recycled water for whom a master recycling permit  
9 has been issued pursuant to Section 13523.1.

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12 **All matter omitted in this version of the bill**  
13 **appears in the bill as introduced in Senate,**  
14 **February 26, 2009 (JR11)**  
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